

A

R E P L Y

TO THE

D E F E N C E

OF THE

M A J O R I T Y,

ON THE

Q U E S T I O N

RELATING TO

GENERAL WARRANTS.



L O N D O N :

Printed for J. ALMON opposite Burlington
House, in Piccadilly, 1764.

(Price One Shilling.)

R. E. L.

D. E. F. C. E.

M. A. J. O. R. I. T. Y.

Q. U. E. S. T. I. O. N.

RELATING TO

GENERAL WARRANTS.



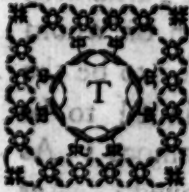
LONDON:

Printed for J. Armon opposite Burlington
House in Piccadilly 1784.

(Price One Shilling)



A
R E P L Y
T O T H E
D E F E N C E of the M A J O R I T Y.

 H E Spirit and Eloquence which are so justly attributed to the Defence of the Minority have drawn forth an answer, that is written in a Language of Plausibility, Refinement, and Address : But, let the Rank and Situation of its Author be what they will, he has laid Himself open to the Censure or Approbation of the Public; and, must therefore, Pardon the Freedom with which I shall presume to remark on his personal Candor, as well as enquire into the Truth of his Assertions and the Fairness of his Argument.

B

Before

Before I proceed, it may not be improper, to bring our Attention to the Ground on which the Resolution, that was the Subject of Debate last Session, and is still the great Object of Discussion, was first moved.

Mr. Wilkes, *then* a Member of Parliament, complained of a Breach of Privilege, in the violent and unlawful Manner in which his house had been broke open, his Person and Papers seized ; but being expelled, before his Complaint was heard, it could not be prosecuted in his own Name and Person : But a Violation of the Privilege of Parliament, being an Offence against Parliament Itself, not confined to the Person on whom it is committed, though it ceased to be the Cause of Mr. Wilkes, it continued to be the Cause of the House of Commons : As such, the Complaint was moved ;—as such the House received it.

In contending for the Privilege of Parliament, the Writer of these Sheets desires, that He may be understood to mean, Not that insolent Abuse of Privilege which has made its Name odious, and its Existence intolerable,——by which Members of Parliament have usurped a Power of making Themselves Judges of their own Causes,
and

and Avengers of their own Quarrels;— by which the Course of Law and Justice have been obstructed, just Debts withheld from many an unhappy Creditor, and Property detained from its true Inheritor.

He begs Leave, to mark out a Distinction between the *Privilege* and *Prerogative* of Parliament; defining the *one* to be the Exercise of a tyrannous and oppressive Jurisdiction over the rest of the Subjects: The *other* to consist in that of Protection, which secures the Representatives of the People from the Power of the Crown. On keeping this Privilege sacred and inviolate, the Freedom of Parliament, and of consequence the Being of our Constitution, depends.

By a late Resolution of both Houses it was declared, “ That there is no Privilege in Case of a seditious Libel.” This Resolution subjects a Member of Parliament to the same Process of Law, that every other Subject is liable to, in the Case of a Libel. But if a Member of Parliament for writing a Libel has been treated in a Manner that the Law does not warrant, there still must be a Breach of Privilege.—Wherever the *Law* has been violated in the Person of a Member of Parliament, *Privilege* has been violated

also.——King Charles 1st, accused five Members of Parliament of High Treason ; and, because there is no Privilege in the Case of Treason, he thought he had a Right to seize upon their persons,——seal up their Papers, and use them as Traitors,——But, without a legal and well-grounded Charge of Treason, the House would not submit to the Seizure of the Persons and Papers of their Members : They voted, therefore (before the King came in Person to demand them) “ The Sealing up of the *latter*, and the Attempt to seize the *former*, an high Breach of Privilege.”

I shall not compare Mr. Wilkes Himself to any of those great Patriots ; yet, so far their Cases are alike, that the Charge of Treason was as merely fictitious in *one* instance as in the *other*.

It was thought necessary, therefore, to form the Resolution in the Shape that it appeared on two Accounts :

In the first Place, it was proper to declare the Illegality of the *manner* of Proceeding against Mr. Wilkes, there being no Privilege as to the Matter of a Libel. And,

Their

Their second Care was, " That in asserting the Privilege of Parliament, they might provide for the Liberty of the Subject in general,

In Pursuance of these Principles the Resolution was thus moved by Sir. W. M. and seconded by Sir G. S.

" That a general Warrant for apprehending and seizing the Authors, Printers and Publishers of a seditious Libel, together with their Papers, is not warranted by Law."

This was moved as leading to *another* consequential to it; " That such Warrant, if executed, is a Violation of the Rights of the Subject; and in Case of a Member of this House, is a Breach of the Privilege of this House."

The Fate of the *former* Question prevented the *latter* from being formally moved; but, so much was the House apprized and possessed of the two Resolutions, as connected and interwoven together, that, although separated in *Fact*, it was as absurd to separate them in Idea and in Argument, as to take part of a Sentence and
argue

argue as upon the Whole, when the Whole together bears a Sense quite different from a Part.

In the Course of the Debate, indeed, it became necessary to defend the *first* Resolution in its separate State, on its own Basis.—On the same Ground it has been the Fashion to write.—The Gazetteer of the 23^d of May, suppresses all Mention of Privilege.—The Defender of the Minority is likewise pleased to drop the Consideration of Privilege, and justify the Resolution only as it asserts the Right of the House of Commons to decide on the Legality of a Question, that affects the Liberty of the Subject.—On this Principle he has written for the Information of all Ranks of People, with that Spirit and Eloquence with which he pleaded their Cause in Parliament. And however, his public Merit may be decried by Ministers, and the Servants of those Ministers, who crouch under the superiority of his Talents; yet his Country will rejoice in seeing his brilliant Faculties employed in the Support of Freedom and the Constitution; after the Example of his illustrious Ancestor, who joined his virtuous Labours with the Ancestor of a noble Duke, whose Loss every honest Heart is now lamenting, in fixing the Sceptre, on a Basis of Liberty,

in

in the Hands of the royal House that now possess it; and on the same Principle let us pray they ever may possess it.

The ministerial Writer accuses the Defender of the Minority of misrepresenting the Question *Himself*, after charging the *Gazetteer* with the Fault. The Truth is this;—The *Gazetteer* has formed a Question of his own, essentially different from any that was proposed in the House.—The Defender of the Minority has stated the Question exactly as it was moved and seconded by Sir W. M. and Sir G. S. This is the sole Object of *his* Attention and Defence. Had he taken upon him to justify the Question, as it was altered by one of the Majority, to serve the Purposes of the *Leaders of the Majority*, he ought to have changed the Title and Tenor of his Performance. It would *then* have been a Defence of the *Majority*.

Having stated the Resolution, as it was first moved, it now becomes me to describe it with the Amendments (which I rather call *Additions*) which being (I must think unfortunately) adopted by Men of great Authority, were by common Agreement of Parties made a Part of the Resolution:

“ That a general Warrant for apprehending
and

and seizing the Authors, Printers and Publishers of a seditious [and treasonable] Libel, together with their Papers, is not warranted by Law." [Altho' such Warrant has been issued according to the usage of Office, and hath been frequently produced to, and so far as appears to this House, the Validity thereof, hath never been debated in the Court of King's Bench, but the Parties thereupon have frequently been bailed by the said Court.]

At first, one is at a Loss to guess for what End this long Paragraph was added to the Question; but the Defender of the Majority informs us, " That the Circumstance of admitting to bail, Persons apprehended under such Warrants, is of such Importance to the Question of the Legality of the Warrants, that in the Opinion of an old and experienced Lawyer, who will ever be esteemed an Honour to the Profession, it implies no less than an Imputation of Perjury to have supposed such Practice to have prevailed in the Court of King's Bench, unless the Legality of the Warrants had at the same Time been acknowledged by the Court."

I don't know who the ancient Lawyer is, whom the Writer speaks of; but (with Deference

ference to his Character and Age) he seems to to have forgotten (if he ever knew) the Practice of the Courts, in which Questions of this Sort usually are agitated. For when a Prisoner is brought before them in Order to be bailed, the Court will remand or bail, according to their ideas of the Offence named in the Warrant of Commitment, without officiously scrutinizing either the form of the Warrant, or the Authority by which it is issued.—— When Mr. Wilkes was brought by Habeas Corpus before the Court of Common Pleas, He was not discharged on Account of the Illegality of the Warrant: The Warrant was not then before the Court: But when He tried his Action for the false Imprisonment, Then the Legality of the Warrant was debated,—— then was its Illegality declared.—— If then the Purpose of this Part of the Amendments was to establish an Opinion of the Legality of the Warrant, it has failed to answer even that bad Purpose. For surely it can answer no good Purpose to justify such a Warrant in any Case but Treason.

The other Addition of the Word [treasonable,] was made (it is given out) in Order to give the Public a true Idea of the Case upon which the Question was agitated: For the Warrant of Lord Halifax

was not for a *seditions*, but for a seditious and *treasonable* Libel.—But how does the Imputation of Treason give a true Idea of a Case in which, *in Fact*, there was *no Treason*? A *Libel* is *one Crime*, *Treason* is *another*. When once a Writing becomes Treason, it ceases to be a *Libel*,—it is *Treason*.—Mr. Wilkes was tried for being the Author and Publisher of a Libel : He was convicted of a *Libel*, not of *Treason*. Had he committed *Treason*, one cannot suppose there would have been a Failure of Justice in prosecuting him to the Extent of his Crime.—The North Briton, however, was described in the Warrant “to be a seditious and *treasonable* Libel.” But is an Epithet inserted in a Warrant to alter the Nature of a Crime? God forbid! At that Rate an unhappy Victim might be judged,——not after the Nature of his Crime, but according to the Number and Weight of Accusations with which an Attorney General may be pleased to load Him.

I will not, at this Time, point out the fatal Consequences of establishing a Power of construing and extending Treason;—I will not now rehearse all the execrable Deeds of Tyranny, which, under this very Power and Doctrine of *constructive Treason*, have been perpetrated in Nations that were once

as free as Great Britain *is* ; but I shall be bold to assert, That as the Charge of Treason, implied in the Warrant of Lord Halifax, was *false*, so the adding of it to the Question must give the Public a *false* Idea of the Case *.

The Defender of the Majority has imputed every ridiculous and bad Motive to those Gentlemen who moved and supported the Question.—May, I then be forgiven, if I allow myself to guess (and I ask Pardon if I am wrong) the Reason why the Word *Treasonable* was contended for——Undoubtedly it gives an Idea of Extent to the Proposition that was never meant ; and an Appearance of interfering with a necessary Power of Government. For, as all treasonable Papers may in some Sense come under the Description of treasonable Libels,

* The Earl of Bristol having exhibited a Charge of Treason against the Earl of Clarendon ; alleged, That he had endeavoured to alienate the Affections of his Majesty's Subjects, by venting *opprobrious Scandals* against his Majesty's *Person* ; and, that he had traduced *both Houses of Parliament* : The Judges were ordered to give their Opinions ; Whether there be any *Treason* in the Charge or no ? They unanimously agreed in their Opinion, *That*, if the Matters alleged in the said Charge were admitted to be true, altho' alleged to be *traitorously done*, yet, there is *no Treason in it*. Lord's Journals, 3d July, 1663.

a cautious Minister might think himself precluded from issuing his Warrant to seize such Papers as actually contain Treason, and for the Detection or Prevention of Treason ought to be searched after and seized.— There were a few then perhaps (and a few were worth adding to so slender a Majority) that would have consented to the Question, as it first stood, who detached Themselves from it, when it became so enlarged. By this Finesse, among others, the Fortune of the Motion was decided.

The Defender of the Majority, I presume, therefore, did not think it incumbent upon Him to write in Praise of an Expedient that *seems* contrived to pervert his *own* and the good Intentions of his *Friends*; and to deprive the Public of a Declaration of Parliament that would at least have been a Guide to *all future Ministers* in the *Exercise of a very dangerous discretionary Power*.

The Intention of these Amendments (it is said) did not escape the Penetration of Gen. Conway, whose civil Virtues, and Zeal for his Country's Liberty are the only Cause we can assign for his Dismission:— A Dismission that has characterized the present Administration through every Part of Europe, where the Talents of that great

great Officer are acknowledged and admired.

The Defender of the *Majority* tells us, "There was but little Necessity at that Time of examining into a Power which had the Sanction of uninterrupted Usage, and which did not appear in the present Instance to have been abused."

That such Warrants have *issued*, I admit :
 —That such Warrant was ever so executed, I utterly deny. The Facts themselves shall speak to the Point of Abuse.— On the 26th of April a general Warrant issued, to seize the Authors, Printers and Publishers of Number 45 of the North Briton. Between that Day and the 29th no less than 49 Persons were taken up ; and amongst them was a reputable Tradesman, who was taken out of Bed from his Wife,——his Child dangerously ill in the Room ;——his House was thrown into the utmost Confusion, and ransacked of his Papers : And having been thus inhumanly seized, he was still more inhumanly detained for three Days, after his Innocence became fully known,— On the 29th, upon the Evidence of Mr. Balf and Mr. Kearsly, the Secretaries of State received full and compleat Information, that Mr. Wilkes
 was

was the Author and Publisher of N^o. 45, of the North Briton : Still the general Warrant was not withdrawn, but remained with a Gang of Messengers to seize Persons and Papers wherever their Inclinations might lead them ; and, by Virtue of this Warrant, on the 30th April, Mr. Wilkes's House was forcibly entered ;—his Doors and Locks all broke open ; his most secret and confidential Papers thrown into a Sack, and put into the Hands of common Messengers, without a Schedule or Security for the Recovery of them. Mr. Wilkes was carried before Lord Halifax. His Friends applied for and obtained a Writ of Habeas Corpus ; which was immediately made known at the Secretary of State's Office ; but, to avoid the Service of the Writ, Mr. Wilkes was hurried away to the Tower ; there denied all Access of his Friends ; debarred the Use of Pen, Ink and Paper ; and kept in closer Custody than is usually imposed on Traitors *.

* There was one Circumstance, which if Decency would allow me to repeat it, might perhaps be laughed at ; but in a serious and thinking Mind, must raise many an horrid Idea of obtaining by Violence, and exposing with Wantonness, a domestic Secret ; such as in many a Family might sow Discord, entail Disgrace, and plant a Thorn, never to be removed, in the Breast of a Wife, a Parent or a Child. (See one of the Notes in Mr. Webb's Publication of general Warrants.)

As

As the ministerial Writer affirms,
 " There appeared no Abuse of Power in
 the present Instance," I should be glad to
 know what the ministerial Idea of the Abuse
 of Power is !

It would be superfluous to point out the
 Consequences of establishing a Power in
 Government to send Messengers to enter
 every Man's House, and seize Persons and
 Papers, in the Manner that has now been
 practised. ——— What private Gentleman
 can think his Property or Reputation safe,
 if the Title Deeds, by which he holds the
one may be taken away, and every Secret
 of his Life be exposed to hurt the *other* ? In
 what a Situation would the Merchant and
 and Tradesman be, if their Books, ——— their
 Correspondence, ——— the State of their Cre-
 dit, ——— the Mysteries of their Trade, were
 daily liable to be searched into and ex-
 posed !

The Defender of the Minority has started
 an Idea of the Violence that we have seen
 practised on *one* Member of Parliament, be-
 ing exercised upon *another*, on whom such
 Violence might be more odious, as to the
Person, though not more unlawful as to
 the *Matter*. His Respondent treats the
 Sup-

Supposition as a mere Phantom of his Imagination; and very truly; but 'tis Imagination realized: What has been done *once*, substantiates the Apprehension that it *may* be done again and again. The Apprehension reaches to all Ranks and Conditions of Men: Not the Authors and Printers only, but the Publishers of a Libel are all under the same Predicament. He who reads a Libel, and shews it to his Friend, is, in the Sense of the Law, as a Publisher of it. Even He who receives it privately, or in a Letter, and does not carry it before a Magistrate, and give Information of whom he had it, is, in the Judgment of the Law, as the Publisher of a Libel.——What may *not* be called a Libel, I don't know: But every political Paper, that has either Spirit, Sense, or Meaning, *may* be called a Libel. Every Paper that contains Truths, which a Minister wishes not to be told;—if it confutes Doctrines, or gives warning of Designs or Practices dangerous to public Liberty or public Welfare, or does but name a public Grievance;—such, at least, an arbitrary Minister will be inclined to treat as Libels: And all who are not fallen into a political Torpor, nor blessed with such a Supineness toward their Country, as not to write, nor even *read* what is written, in its Defence, are daily liable to have their
Houses

Houses broken open, their Persons seized, and their Papers carried away by Virtue of a Warrant from the Secretary of State.

But I ask Pardon, for not doing Administration the Justice to name the righteous Cause which their own Advocate assigns for the Exercise of this Power; "which did not appear in the present Instance to have been abused; since it was made use of (these are his Words) not to entrap or entangle Innocence, but manifestly with an Intention of discovering, and bringing to punishment a daring and dangerous Offender."—A very laudable Intention, truly, for an Administration to *manifest*, and a very competent Means, to effectuate their Ends! A Man's House is broke open, and his Papers are carried away for the Purpose of bringing him to Punishment! *Some* of these Papers are supposed to afford Materials for a *Prosecution*; *others* may contain the ground of a Defence. By producing the *former* the Accusation is established;—by with-holding the latter Conviction is insured,

The Writer for the Majority, does not speak the Language of an ignorant Man; yet strangely ignorant must that Man be who does not know, That of all those Laws, under which we live and are protec-

ted, there is none more sacred than that Law, which says, that no Man shall be obliged to furnish Evidence against Himself. In Felony, you may search for stolen Goods, but not for other Evidence against the Thief. In Treason, you may search for and seize Papers, in order to discover Treason, but cannot use those Papers in Evidence against the Man in whose Custody they are found.——What the Law, therefore, has forbidden in Felony and Treason, Does the Minister claim a Power of doing in the Case of every political Paper that is published, which he dislikes, and which his Attorney General may be pleased to call a *sedition and treasonable Libel*? Has this Writer ever heard of the Fate of Algernon Sidney,——the daring and dangerous Offender of his Day? *Daring* he was in the Cause of Liberty, to which he fell a *Martyr*; and *dangerous* to a Court which aimed at arbitrary Power. They seized his Papers *manifestly with an Intention of bringing Him to Punishment*; and in those Papers found the Means to accomplish their accursed Ends *.

It

* As the Case of Algernon Sidney proves the Danger of seizing Papers, in destroying an innocent Man; there is another Example in that Reign of this Efficacy in concealing the Guilt of Ministers Themselves.

It is a false,——it is a wicked Idea of Punishment, to suppose it inflicted out of a Principle of *Revenge* on the Man who suffers. It is a painful tho' necessary Expedient to prevent Crimes, by afflicting those who commit them: But there cannot be a more heinous Perversion of Law and Justice, than to punish Guilt in a manner that may be drawn in the Example to endanger Innocence; the Protection whereof is the sole End and Aim of all rational, humane and legal Punishment.

But will the ministerial Writer tell us, Why the Law Itself is not sufficient to inflict due Punishment in Case of a Libel, as in every other Misdemeanor!—Why is the Hand of Power required!——Where is

selfes. Mr. Montagu, during his Embassy at Paris, having received a Letter, written by Lord Danby, and subscribed by the King Himself (Charles 2d) to treat with the King of France for a Pension of 300,000 l. per Annum for three Years, in Case the Peace succeeded; (For then the King durst not meet his Parliament for so long a Time.) It was Lord Danby's Device, under the Pretence of a treasonable Correspondence, to seize Mr. Montagu's Papers, in hopes to get this Letter back and destroy it; that it might not be produced in Evidence of his own and the King his Master's Guilt. The House were taking up the Matter, as a Breach of Privilege, but stopt by the sudden Dissolution of Parliament.

the *Expediency* for Government, or even the least *Pretence* to interfere with the Productions of the Press! Till a Libel is published it surely can be no Harm; and when it is published it goes into a thousand Hands. Can it be necessary for a Secretary of State to issue his general Warrant to break into Houses,—open Bureaus, and seize Papers, for what may be found on every Stationers Counter, and every Coffee-house Table!

But the Answer to this is: No Matter for the Reasonableness of this Power, 'tis a prescriptive Right, *justified and confirmed by Precedents produced from the Time of the Revolution, reaching back perhaps to the remotest Times, and combined with the Essence of Government.*

I shall State my Reasons, and those Reasons deduced from historical Facts, to prove That the Secretary of State did not exercise any Power over the Press in any former Reign before the Revolution. "*The happy Æra of our Liberties being confirmed.*" (But is it the better for the Time when it began?) When, I say, "it began at the Revolution," I mean as to *Fact* only; for it could not then be foreseen to what Lengths this Power would be extended, and to what Purposes applied.

And,

And, when I mention the Power of the Secretary of State's Office, let it be understood, That I mean no more than that before the Revolution, it did not interfere with the common Productions of the Press. For the Star-chamber, as long as it existed, was invested with the sole and absolute Jurisdiction over the Press; of which its Judgments are everlasting and incontestible Proofs.——In the Reigns of the first James and the first Charles, this Court was brought to the Zenith of its Power. And the usual Sentence that passed on every honest Man, who dared to write in Defence of his Country, was, two or three Years Imprisonment, two or three severe Whippings, the slitting of his Nose, cutting off his Ears and Deprivation of one Half of his Fortune.——Little did Secretaries of State, *then* think of interfering with the Jurisdiction of this dreadful Tribunal.

When the Star-chamber was abolished, all arbitrary Dominion over the Press ceased likewise. For at the Restoration of King Charles 2d, when every dormant Power of Government was awakened, and an Infatuation prevailed in the Nation, and in the Parliament Itself to heighten the Prerogative of the Crown; yet was not this Power claimed

claimed or thought of ; even when the Suppression of *licentious* and *seditions* Writings was the very Object of Government. Had it been conceived that such a Power was vested in his own Secretary of State, King Charles 2d, would never have gone to Parliament to ask for it : But He *did* go to Parliament, which in the second Year of his Reign passed the licensing Act, to continue in force for two Years only ; by Virtue of which Act, the Chief Justice of the King's Bench was allowed to issue his Warrant, to empower the Messenger of the Press, with such as he should call to assist him, to seize all seditious Books and Pamphlets, together with the Authors, Printers and Publishers of them. — This Act was prolonged from Time to Time, till after the Year 1678, when it finally expired. But for two Years after its Expiration Lord Chief Justice Scroggs, continued the Practice of issuing general Warrants in the Case of seditious Libels ; for which he was impeached.

It was at the Revolution, then, when this *modern Practice* began in the *modern Office* of Secretary of State : (For tho' it might become an Office of some *Dignity* in Henry 8th's Time, it was not *then* an Office of Power) — At the Accession of King William

liam, and for many Years after, scarce a Wind blew fair from France, but it brought over Declarations, Manifesto's, Exhortations, Blessings and Curses, Threats and Promises from the abdicated King. The Jacobite Party were ready to receive, print, reprint and disperse these Papers; which being actual Treason, the Secretaries of State did certainly issue their Warrants to seize them together with the Publishers.

Thus are we to account for the Rise of this Power; which began upon Treason; but, in that course of Progression which is natural to lawless Power, extended itself to such other Productions of the Press as were offensive to Government, but far short of Treason: And it has fallen to this Writer's small share of Knowledge to meet with but one Instance (which is told in the Note) of the Legality of this Power being questioned *.

Why

* One Finlason, who was in the Rebellion of 1745, came up to London, after the Act of Indemnity was passed, and printed a Map of the young Pretender's Travels in Scotland, both before and after the Battle of Culloden. In this Map (it is said) were marked out the most remarkable Circumstances that attended his Escape:—Such as, where his Royal Highness lay in a Pig-stye, or a Ditch, or a Coal-hole, or a Chimney, when any of the Royal Troops came

Why they have not been more litigated is to be accounted for from the Situation of the Times *in which*, and the Persons *on whom* they have been executed. The Times have been usually those of public Danger and Confusion, followed always by Acts of Indemnity; which prevent Prosecutions of this Nature; and are not intended so much to exculpate Traitors and Criminals, as to protect the Servants of the Crown from vexatious Suits and Prosecutions, in consequence of having done many Things which the public Safety required, tho', perhaps, not conformable to the strict Rules of Law.

came near Him; and when he rode behind Miss Flora Macdonald. Miss Flora habited like a Foot-boy, and his Royal Highness in Woman's Cloaths, personating an Highland Lady. This Map (as Report says) was printed for the Emolument and Satisfaction of the late worthy Privy Counsellor, Sir John Philipps and his Friends. That they might be duly thankful to Providence for the marvellous Escape of this Hope of the House of Stuart. The Duke of Newcastle, then Secretary of State, issued his Warrant to seize Mr. Finlason and his Maps. Mr. Finlason (by himself or his Patrons) prosecuted the King's Messenger for this Proceeding, and had 300l. given him to stop the Prosecution.

The

The *Persons* on whom these Warrants have been usually served, are poor Authors and Printers :——Men not in a Condition to wage War with Government, or entertain the high-flown Thoughts of bringing Ministers of State to Justice.

But were there as many Precedents before the Date of the Magna Charta, as may be produced since the Æra of the Revolution, they cannot justify a Practice so repugnant to the Letter and Spirit of our Laws ;——so inconsistent with the Essence of Liberty. 'Tis a Maxim quoted by Lord Coke, "*That we are to be governed according to LAW, not EXAMPLES :*" And we are told by the same Authority, "*That Precedents which run in a Storm, are no Direction in Point of Law.*" And 'tis a Sentence of the great Algernon Sydney, "*That the Authority of Magistracy proceeds not from the Number of Years it has continued, but from the Rectitude of its Institution* *.

The Star-chamber Itself was founded on a Principle of Benevolence and Mercy : It was established for the Protection and Redress of the Poor, against the Insults and

* Sydney on Government.

Oppression of the Rich): " But, being confined by no Bounds of Law, it overflowed the Banks, ~~What~~ should have constrained it, and became a Deluge of Tyranny and Oppression. ~~Ed: 30~~ a m m m m m ———: a m m m m m

So likewise the Prerogative of the Crown was instituted for the Good of the People: And, there can be no Doubt, but that on great-emergent Occasions, all Obedience is then due to that supreme Law, — the SAFETY OF THE COMMONWEALTH, which calls upon the great Officers of State to exceed the narrow and prudential Limits of the Common Law. There can be no doubt, but that the Representatives of the People will indemnify; — the Represented thank and praise them. But 'tis the Emergency of the Case and Situation of the Time only, that can justify the Use and Exercise of unlawful Power. Wherever it appears on any other Occasion, it is the Duty of those who are entrusted with the Tuition of public Liberty, to censure and suppress it.

The Author, who asserts the Necessity of Power in the Case of Libels, would do well to give his Reasons: For to common

* Lord Clarendon's History.

Un-

Understandings even the Plea of *Expediency* is ridiculous.

The Defender of the Majority has wasted five Pages, to shew how *ingeniously* this Resolution might be evaded. — What Not?

He likewise tells us. “ ’Twas amusing the Public with the Sound of Liberty, when Nothing was meant: ’twas a futile Proposition that could extend no farther than to a particular and recent Instance.” That particular Instance, however, comprehends nothing less than the whole Liberty of the Press. And the Care, Assiduity, Zeal, — the Art and Labour that were exerted on this Occasion prove, That if this *ineffectual* Resolution was a *mière Trifle* for the People to gain, ’twas no Trifle for the Minister to lose.

The Defender of the Majority does, indeed, speak with a proper Contempt and Detestation of those *nameless Scribblers*, who traduce the Characters of Men to whom they are Strangers. It is very odd, that, He should make Himself the Object of his own Scorn, with the Aggravation of attempting to revile (in the supposed Author of the BUDGET) a Character to which He is *not*

a Stranger :— A Character that Profligacy Itself might be shocked to scandalize*.

But, don't let these Ministers by Themselves, or their Penmen, publish so *vain* a Supposition as that this excellent Person lives in *Envy* of THEIR Stations. The Finger that is pointed at *Them*, marks them not out as Objects of *Envy* to one who stands high in the Opinion of his Country; — revered by his numerous Constituents; — habituated to Virtue and the Cultivation of Science; — negligent of Himself, and only sensible of the Enjoyment of his extensive Fortune, as it enables him to indulge the Benevolence of his Heart.

It is a Mistake, indeed, to suppose this Gentleman the Author of the Budget. Be that Author who He may, his Performance, if it be capable of an Answer, at least *deserves* one: And it would become this

* In the Defence of the Majority, the Person who seconded the Motion is represented in these Words, " Whose Acrimony flows from a Heart consumed with ENVY, Spleen, Conceitedness and Self-importance, from one, who has been taught to think himself a Statesman, and who would be too happy to be able to think himself a Minister."

Writer

Writer (if he could) to answer, better than rail at it: For, after all his railing, the BUDGET is unanswered.

He goes on to tell us, that the Case of *Seditious Writings* is of more general Mischief. It is the *subtle Poison* that Creeps imperceptibly thro' every Vein; — The Seed of Revolts, Jealousy and civil Discord; and is at least the *Parent of Treason*, if not the offspring of it.

All this may be true; yet ought we not to be out of love with that *vital Part* of Liberty, which we term the Liberty of the Press; nor continue the Existence of a Power over it, that is incompatible with its Freedom. It is unhappily blended with the Nature of Liberty, to degenerate often into Licentiousness; But, 'tis so impossible to draw the Line between Them, that if you resort to more than legal Power to suppress the *One*, you will soon destroy the *Other*. And, we ought to think of Liberty as of Providence; That for the Sake of universal Good, we must submit to partial and accidental Evil.

The British Constitution, is the Business of every Briton; and 'tis his Right to publish his Thoughts, as well as know the Situation

ation of national Affairs. Nor do any real Mischiefs result from this Privilege. When *good* Measures are pursued, by making them known to *all*, it animates *all* to assist and invigorate their Operations. When *bad* ones are attempted, it puts us upon our Guard against them. Without this Guard, our Constitution might be lost before we saw our Danger ; and Tyranny come upon us *like a Thief in the Night*.——To *bad* Ministers, and to them *only*, are public Enquiries frightful. A *good* one has nothing to fear from the Attacks of Malice and Slander ; since that Investigation of Truth which is natural to a free People, will soon efface the weak Impressions of envious and seditious Writers.

If therefore, the Freedom of Writing (in the Idea of Licentiousness) *does* contain some Ingredient of Poison, it carries an Antidote along with it. It is the offspring of Liberty, and, like the Emblem of Roman Charity, keeps its antient Parent alive.

To rescue this great Branch of Liberty from the Hand of Power, as well as to protect the personal Freedom of the Subject from farther Violations, was certainly the Object of that Minority, to whom the Advocates

vocates of the Ministry, will allow no Motives, but such as shew a badness of Intention and weakness of Understanding.

There are two personal Reflections on those Gentlemen of the Minority, who took Parts in debating this Question, that I beg leave to take Notice of. They are accused of too much Candor to Mr. Wilkes; and of a malevolent Desire *to squint a Censure of Blame* on those Officers of the Crown, who were concerned in issuing or executing the Warrants.

As to Mr. Wilkes, He seems to be given up on all Sides, in a Manner that might satiate every Thirst of Vengeance, that is not insatiable. But, let the Minority take Shame——if it be a Shame, that whilst they *condemned as Judges*, they *felt as Men*.——If, whom they saw as an Object of *Punishment*, they looked upon as an Object of *Compassion*. Let it be told likewise, That of the Minority, there were none who discovered a malignant Joy in pursuing that unhappy Person, with unrelenting Fury, to his Ruin, nor gave Samples of that innate Meanness and Cruelty of Heart, which never manifest themselves so fully, as
by

by insulting the oppressed, and aggravating the Distresses of a falling Man.

The other Calumny of personal Malevolence wants nothing to confute it, but the Remembrance of what was said by the Members of the Minority, both at the Introduction of the Question, and during the subsequent Debates. They named the Living with Honour, and the Dead with Reverence. They Themselves pleaded the Usage of Office, in Excuse of issuing the Warrant. And whatever Excesses appeared in the Execution, they attributed to that warmth of Heart, which was natural to arise in generous and noble Minds against a Man, who had so irreverently dared to Label even the best of Kings;—dear to all his Subjects,——dearer still to those, who, in the happy Situation of being near his Person, enjoy the immediate Effects of that Grace, Benevolence and Wisdom, which, in a remoter Degree, are diffused over the whole Body of his People.

The Speakers of the Majority, on the other Hand, thought proper to defend every Act and Circumstance that happened in the issuing and serving of the Warrant;—to remove the Idea of any Thing being done with *Haste* or *Violence*; but with *cool*

De-

See his Dep
per p. 726

Deliberation and Judgment.—Let the Facts be recollected, and then let Common Sense determine, *who* shewed themselves *Friends* to the Characters of those noble and honourable Persons that were concerned in this Business?

But the Gazetteer tells those, whom he addresses as the Leaders of the Minority, “*This seeming Tendernefs was affected, because you knew, yourselves and Favourites, were obnoxious to the same Accufation*”. One of these *Favourites* (the *Favourite* of his Country) happened to issue no general Warrant in the Case of a Libel, during the Time of his glorious Administration. Another of these *Favourites* is a noble Duke, who enjoyed the Office of Secretary of State for Thirty-three Years, without the suspicion of affecting arbitrary Power. It is admitted, that he continued the Practice as he found it, of issuing general Warrants; directing them to be executed (as they were in *his* time) with Decency, Humanity, and Caution.—But, so far was this noble Person from desiring to shelter himself behind the *Tendernefs* of his Friends, that he generously requested, “That no personal Regard to himself, might influence the Conduct of his nearest Relation or Friend: For, that he should be very sorry, if from that

F

Tender-

Tenderneſs of his Friends to him, the future Exerciſe of a Power, which was of ſuch conſequence to the Public, ſhould not be prevented."

But, ſay the Miniſtry, what Redreſs,— what Security did this Minority aim at! Why Nothing, truly, but " an *ineffectual* Reſolution of *one* Houſe of Parliament, declaring their Senſe of the Matter, not to be pleaded in a Court of Law."

Such is the decent Treatment of the Representatives of the People of England! Is it, then, a mere vulgar Error,——a falſe Chimæra, which we have long entertained, That the Birthright and Privilege of Engliſhmen was, to chuſe the Guardians of their Liberty! How, then, are thoſe Guardians to execute their Truſt, if they are not to have a Right even of declaring their Senſe of Liberty? Let us look on thoſe Times, when Liberty was moſt felt and beſt underſtood: —— Where the nobleſt and pureſt Blood of our Anceſtors was ſhed in Defence of it: We ſhall not find, That the Representatives of the People, in this collective Body, were *then* directed humbly to wait on Courts of Law, to take from *thence* their Ideas of Liberty, and learn how to defend it. Have Judges been *always* the Patrons
of

of Liberty? On the contrary, there has been no bad Reign from that of Richard 2d, to the 2d James, without a *Tresilian* and a *Jefferies*, to sanctify with their Opinions, and forward by their Judgments, the foulest Conspiracies, that Kings and Ministers have ever formed against the Rights and Liberties of the People. And 'twill ever be decisive on the Intentions of Ministers, when we see them confide in Judges of arbitrary Principles, and resort to Lawyers who are most notorious for the Profligacy of their Practices in that Profession. — But by Kings who have favoured Liberty, Men of the greatest Eminence of Parts and Knowledge, — of the purest Integrity and Morals, — of the soundest Principles with Regard to Liberty, have been advanced to the high Stations of the Law. Lord Sommers was the Favourite Lawyer of King William; and the Earl of Hardwicke of King George the Second.

Let us read those great Resolutions in the Reign of Charles 1st, concerning Ship-money and the Habeas Corpus, and there see, Whether the Law of Liberty was declared in *Westminster-Hall* or the House of Commons? And if the House of Commons could *then* take upon them to controul,

F 2

censure,

But come nearer home

censure, impeach Judges for deciding *against* Liberty, why, in the Name of God! is *this* House of Commons to be afraid of co-operating with a wise and virtuous Judge, deciding *in Favour* of Liberty?

Whoever shall search the Journals of the House of Commons, will find in how many Cases they exercised their Right of declaring the Law.—They did it in Regulations of Trade; in Monopolies and Patents;—in Charters; in all Questions of constitutional Liberty;—in all Matters of public Property.

Some of these Precedents are set down in the Note.—I expect to be told, “ They are not apposite.”——In Point of *Fact*, indeed, they are not similar, tho’ alike in Principle. But ’tis mere quibbling to deny the Authority of Precedents, because they vary in *Circumstances*, tho’ in *Principles* they correspond.

Let

30 April 1624. Resolved as the Opinion of the House, That the Imprest Money, sent by Merchant-Adventurers upon Cloth is *unlawful*.

17 March

Let us consider these Precedents, not merely as Authorities for the House of Commons to declare the Law in such Cases ;
but,

17 March, 1624. Clause of Confiscation in the Patent of Sir F. Gorges, voted *unâ voce* void, *against Law*.

15 July, 1664. Resolved, That the Pamphlet (written by Mr. Pryn) intituled " summary Reasons &c. is an *illegal*, false, scandalous and seditious Pamphlet.

22 May, 1663. The Committee represent the *Illegality* of Sir John Winter's Grant, to which the House agreed.

18 Dec. 1666. Mr. Tayleur's first Imprisonment declared *illegal*.

Also, Dispossession of Mr. Tayleur out of certain Rooms in the Timber Yard belonging to the Castle of Windsor, voted *illegal*.

Also, the second Commitment of Mr. Tayleur, by Lord Mordaunt, voted *illegal*.

6, Nov. 1667. Resolved that the House doth agree with the Committee, " That the Charter of incorporating the Woodmongers, is *illegal*."

but, to shew that such Resolutions (however they *may* be) have not *yet* been treated as the *Brawlings of drunken Porters* : For of all

13 Dec. 1667. Resolved, that the Precedents and Practice of fining or imprisoning Juries, is *illegal*, (Sir. J. Keeling's Case.)

Chief Justice Scroggs, having from Time to Time issued *General Warrants*, empowering the Messenger of the Press, with his Assistants, to seize all Persons whom they shall suspect of Writing and Publishing *Seditious Libels*.

24 June, 1680. The Commons resolved, nemine contradicente, That the Warrants were *illegal*.

24 June, 1689. Resolved, That the Judgment against Mr. Johnson in the King's Bench, was *illegal* and cruel.

Resolved, that the Ecclesiastical Commission, by which Mr. Johnson was degraded, was *illegal*.

Resolved, That Mr. Johnson, *not* being sentenced, deprived or degraded by the Bishop of London (if he had deserved the same) was *illegal*.

9 March, 1707. Resolved, nemine contradicente, That for any Judge in his Circuit, to demand a present from any Sheriff of a County or Magistrate of a Corporation, is *illegal*.

19 Dec.

all the Resolutions I have quoted (and I presume there are many others) there is not *one*, against which any *Minister* has yet dared to *act*, or a *Judge* to *call in* Question.

By the Resolution, therefore, as it was moved, the Gentlemen of the Minority did hope to have given some Security to their Constituents.——And, will the Gentlemen of the Majority, who reprobate the Efficacy of such a Resolution, be pleased to tell us, Where we are to look for the Security of our Liberties, if our Representatives in Parliament, in their collective Body, have no Power to give it us.

It is with great Concern, that I detain my Readers any longer; and the more so, as 'tis on a very silly Occasion. But I had almost forgot the Bill,——proposed by Sir J. Philipps (the Friend of Mr. Finlason abovementioned) to damn the Minority all at once in the Opinions of Mankind, and to make us fall in Love with the Administra-

19 Dec. 1710. Resolved, That the Charter, dated 20 April, 1708, attempted to be imposed on the Corporation of Bewdley, is void, *illegal*, and destructive of the Constitution of Parliament.

tion

tion. " When did a Chancellor of the Exchequer, and an Administration, intend an Act so essentially to the Existence of Liberty?—(Gazetteer, 23d May.)

But let me ask these Champions for Liberty, *the Chancellor of the Exchequer*, and *the Administration*, if they had intended to pass the Bill, why did they reject the Resolution which was the best Foundation for the Bill? If they were in Earnest about it, how came it not to succeed?—a *Minority* reject a Bill that the *MAJORITY* really intend!—'Tis an errant Bull.

But do they really talk such a Language of Themselves, That they are unable to go thro' with a Proposition that they think right, unless the *Minority* will help them out!—That the *Minority* gave no Countenance to the *sham Offer* of this foolish Bill, is true :—That the rejecting of it lies wholly at *their Door* is false.

Sir J. Philipps (according to report) in a very thin House (the Minister present, but not attended like a Minister who has a Point to carry) moved for Leave to bring in a Bill, to regulate the Secretary of State's Office. Who first opposed, and raised a general

neral Disgust against this Bill ? Not one of the Minority ; but a noble Person whose high Rank and Distinction do the Ministry great Honour, and on whose Abilities they greatly rely. Some of the Minority might perhaps say, “ It was foreign to the original Intent of *their* Resolution, which was to vindicate the Privilege of the House, and *that* was not to be done by a Bill :

—— That they wished to put an end to an abusive Exercise of Power, in a Case wherein no such Power was wanted ; but not to interfere with any other Power of the Secretary of State’s Office :——

They knew the Absurdity of limiting its *necessary* Power by any Rules of Law :——

They saw the Danger of giving the Sanction of Law to Powers that are never to be endured, but in Cases of Exigency ; in which they *are* and ever *will be* justified.”

But so far was the Minority from putting even a Negative upon this Bill, that most of them went away with a Notion it was to come in :—— They were surprised, when they heard Sir J. Philipps had withdrawn his Motion.

To be sure the Proposal of this Bill might answer some very worthy Purposes. The Declaration of moving it, was, as the *Gazetteer* says, *well timed*. It might come in Aid of the *Promise to decide the Question at Common Law in two Months*, to gain a weak Brother or two to the Majority;——it might furnish some *late* independent Gentlemen with a flimsy Excuse to their *still* independent Electors; ——Above all, it might give the Ministry a weak, forlorn Hope of shifting the national discontent from their own Shoulders, to those of the Minority.——Such is the History of this *notable* Bill, broached with Nonsense, and since made a Vehicle for Slander and Misrepresentation.

I shall not attempt to imitate the pathetic Style, with which the Defender of the Majority closes his Performance. He laments, most seriously laments,——O *Grief of Grievs!* the unhappy Temper of the Times, and the State of his Country, *exhausted* by a bloody and expensive War. But it is Wisdom in the Administration to be always publishing our Debility? Do they not, by that Language invite (as 'twere) our Enemies to insult us; and oblige us to open again those Resources, which are (by *their* Account) so near a Period.

Let

Let it be remembered, how few there are of the present Administration, who, did not co-operate in raising those Supplies, by which, they now insist, we are exhausted. Those Supplies were granted but for an uncertain Chance of Victory. Victories upon Victories were obtained. Is it not then Impudence to *squint a Censure of Blame* on that Great Minister, thro' whom we obtained those great Victories, tho' we lost the Fruits of them, when we lost the Benefit of his Counsels?—Why did not these great Men oppose the levying of so much Money, when that expensive System was adopted? It is the *Resource* of a Justification *now* to say, That in *private* they *disapproved*, what in *Public* they avowed;—for Silence in Men of their Stations is *avowal*.

An Act of Power was committed, which the People thought, and still think a Violation of their Liberty. It excited their Passions,—it raised their Apprehensions and Fears. To allay these Emotions an effectual Remedy was proposed. Who rejected it? Do Ministers suppose, that a Nation, hurt and denied Relief, is not to complain?

To

To give Cause for Clamour, and afterwards find Fault with it, is like a Woman, who having lost her Character by her own Misconduct, is for ever railing at the Illnature of the World.

THE END.

